

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
WAIKOLOA WATER CO., INC., WAIKOLOA )  
SANITARY SEWER CO., INC., WAIKOLOA )  
RESORT UTILITIES, INC., and HAWAII )  
WATER SERVICE COMPANY, INC. )  
 )

DOCKET NO. 2008-0018

Requesting Approval of (a) the Sale )  
of the Stock of Waikoloa Water Co., )  
Inc., Waikoloa Sanitary Sewer Co., )  
Inc., and Waikoloa Resort Utilities, )  
Inc., to Hawaii Water Service )  
Company, Inc., Pursuant to Hawaii )  
Revised Statutes §§ 269-17.5 and )  
269-18; and (b) Financing )  
Arrangements pursuant to Hawaii )  
Revised Statutes § 269-17. )

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

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FILED

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	)	

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DECISION AND ORDER

By this Decision and Order, the commission approves, subject to certain regulatory conditions described herein, the proposed stock sales and related financing transactions described in the application filed by WAIKOLOA WATER CO., INC. ("WWC"), WAIKOLOA SANITARY SEWER CO., INC. ("WSSC"), WAIKOLOA RESORT UTILITIES, INC. ("WRU") (collectively, "the Waikoloa Utilities") and HAWAII WATER SERVICE COMPANY, INC. ("HWSC") (the Waikoloa Utilities and HWSC are collectively referred to as "Applicants") on January 31, 2008.<sup>1</sup>

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<sup>1</sup>Application, Exhibits A through I, Verifications of Thos Rohr and Martin Kropelnicki, and Certificate of Service, filed on January 31, 2008 (collectively, "Application").

I.

Background

A.

Application

On January 31, 2008, Applicants filed an Application requesting that the commission, among other things: (1) approve pursuant to Hawaii Revised Statutes ("HRS") §§ 269-17.5 and 269-18, the sale of all of the issued and outstanding capital stock of the Waikoloa Utilities to HWSC; (2) approve pursuant to HRS § 269-17, the financing arrangements to refinance existing debt of the Waikoloa Utilities; and (3) "[g]rant such other relief as may be just and reasonable under the circumstances."<sup>2</sup>

1.

Description of Applicants

a.

WWC

WWC is a public utility authorized to provide potable water service, including private fire service, to residences and establishments in the Waikoloa Village, Waikoloa Highlands, and ranchlands in South Kohala on the Island of Hawaii.<sup>3</sup> The WWC system is part of a water system which serves the entire Waikoloa area, including the Waikoloa Beach Resort. The wells, transmission lines, and

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<sup>2</sup>Application, at 2.

<sup>3</sup>Application, at 3.

a majority of the storage facilities of this system are jointly owned, operated, and maintained by WWC and WRU pursuant to a Water Sharing Agreement.<sup>4</sup> Applicants state, "WWC is exempt by law from having to obtain a certificate of public convenience and necessity [("CPCN")] because it received approval to operate as a regulated public utility before 1978."<sup>5</sup> All of WWC's common stock is owned by Waikoloa Land & Cattle Co. ("Waikoloa Land"), a limited partnership in the State of Hawaii ("Hawaii" or "State").<sup>6</sup>

b.

WSSC

WSSC is a public utility that provides wastewater treatment service to residential and commercial establishments in the greater Waikoloa Village area in South Kohala, on the Island of Hawaii.<sup>7</sup> WSSC was granted a CPCN by the commission in Decision and Order No. 8201, filed on December 19, 1984, in Docket Nos. 5107 and 5108 (consolidated). It is a Hawaii corporation and 100% of its common stock is owned by Waikoloa Land.<sup>8</sup>

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<sup>4</sup>Application, at 3.

<sup>5</sup>Application, at 4.

<sup>6</sup>Application, at 4.

<sup>7</sup>Application, at 4.

<sup>8</sup>Application, at 4.

c.

WRU

WRU is a public utility providing potable water, sewage treatment, and irrigation water services to the Waikoloa Beach Resort area on the Island of Hawaii.<sup>9</sup> It serves both residential and commercial developments. WRU's system is part of an overall potable water system jointly owned, operated, and maintained by WRU and WWC.<sup>10</sup> WRU was granted a CPCN in Decision and Order No. 6078, filed on February 14, 1980, in Docket Nos. 3795 and 3796 (consolidated). WRU is a Hawaii corporation and 100% of its common stock is owned by Waikoloa Development Co. ("Waikoloa Development").<sup>11</sup>

d.

HWSC

HWSC provides potable water service to resort and residential developments in Kaanapali, on the island of Maui.<sup>12</sup> HWSC, formerly known as the Kaanapali Water Corporation, was granted a CPCN by the commission in Decision and Order No. 6230, filed on June 9, 1980, in Docket No. 3700. It is a wholly owned subsidiary of the California Water Service Group ("CWSG").<sup>13</sup>

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<sup>9</sup>Application, at 4.

<sup>10</sup>Application, at 4.

<sup>11</sup>Application, at 5.

<sup>12</sup>Application, at 5.

<sup>13</sup>Application, at 5.

Applicants state:

Besides HWSC, CWSG's operating subsidiaries include California Water Service Company (water service), New Mexico Water Service Company (water and wastewater services), Washington Water Service Company (water service), and CWS Utility Services, a non-regulated subsidiary. CWSG is a public company traded on the New York Stock Exchange under the symbol "CWT." Standard & Poor's rates and CWSG's subsidiaries' bonds at A+, their highest ratings for any of the investor-owned water utilities. CWSG and its subsidiaries collectively have available a \$75 million bank line of credit. CWSG's audited financial statements are available on the SEC's website.

Application, at 6.

By Decision and Order, filed on June 12, 2008, in Docket No. 2007-0238, the commission granted authority for the transfer of Pukalani STP Co., Ltd.'s ("Pukalani") utility assets and CPCN to HWSC; thereby granting HWSC authority to provide wastewater collection and treatment services in Pukalani, Maui. Pukalani's plant was already operated and maintained by HWSC prior to the transfer pursuant to an operating agreement dated July 10, 2007.<sup>14</sup>

2.

Proposed Stock Sales of WWC, WSSC, and WRU

Waikoloa Land and HWSC have entered into a Stock Purchase Agreement dated December 20, 2007 ("Transaction A"), pursuant to which HWSC agrees to purchase 100% of the outstanding shares of stock of WWC and WSSC from Waikoloa Land

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<sup>14</sup>Decision and Order, filed on June 12, 2008 in Docket No. 2007-0238, at 3.

for \$1,500,000.00.<sup>15</sup> Waikoloa Development and HWSC have also entered into a Stock Purchase Agreement dated December 20, 2007 ("Transaction B"), pursuant to which HWSC will purchase 100% of the outstanding shares of stock of WRU from Waikoloa Development for \$6,300,000.00.<sup>16</sup>

Applicants note:

The closing of the stock purchases are conditioned on (1) securing the [c]ommission's approval of the transactions, and (2) the performance of all obligations and satisfaction of all conditions precedent specified in [Transaction A and Transaction B].

Pursuant to HRS Section 269-18, [c]ommission approval must be obtained before any public utility may "purchase or acquire, take or hold, any part of the capital stock of any other public utility corporation, organized or existing under or by virtue of the laws of the State . . . ." HRS § 269-17.5 also requires [c]ommission approval when "more than twenty-five percent of the issued and outstanding voting stock of a corporation organized under the laws of the State and who owns, controls operates, or manages any plant or equipment, or any part thereof, as a public utility within the definition set forth in section 269-1 [will] be held, whether directly or indirectly, . . . by any person . . . ." Because HWSC seeks to acquire all of the capital stock of WWC, WSSC and WRU, all Hawaii public utility corporations; [c]ommission approval is required.

Application, at 6-7.

Applicants represent that "HWSC is fit, willing and able to provide service to the Waikoloa Utilities' service territory, to satisfy all of its public utility obligations, and to conform to the terms, conditions, rules, and regulations of

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<sup>15</sup>Application, at 6.

<sup>16</sup>Application, at 6.

the [c]ommission, and that the subject transaction is reasonable and in the public interest."<sup>17</sup> Applicants state that the transactions are in the best interest of the customers due to the expertise and financial resources of HWSC and CWSG.<sup>18</sup> HWSC will benefit from the technical, managerial and financial support of CWSG.<sup>19</sup> Applicants state:

the Waikoloa Utilities are facing substantial capital improvements necessary to meet a rapidly growing demand for water and sewer services in the Waikoloa Beach Resort and the Waikoloa Village area. Those projected improvements include a new sewage treatment plant for WSSC; an expanded and upgraded sewage treatment plant for WRU; and additional wells, tanks, and other transmission facilities to provide potable water for new customers of WRU and WWC. With the financial strength and technical and management expertise of CWSG, HWSC will help the Waikoloa Utilities to timely and efficiently complete all of the necessary capital improvement projects.

HWSC is committed to maintaining and improving upon the Waikoloa Utilities' high standards of reliability and customer service. In addition, HWSC and its upstream affiliates all have extensive experience in the water and wastewater industries to understand the regulatory issues affecting the industry and to provide any necessary support and other services to ensure the successful operation of the acquired utility operations without degradation of service to the Waikoloa Utilities' customers. CWSG has an employee team dedicated to measuring its ability to satisfy its customers. HWSC's acquisition of the stock will provide for professional management, operation and maintenance of the Waikoloa Utilities' systems, compliance with health and safety regulations, and timely responses to customers' concerns and inquiries and emergency situations . . . . In addition,

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<sup>17</sup>Application, at 7.

<sup>18</sup>Application, at 7.

<sup>19</sup>Application, at 7.



HWSC intends to employ, or to cause the Waikoloa Utilities to employ, all of the employees who are currently dedicated to the Waikoloa Utilities operations.

Application, at 8-9. Applicants represent that "HWSC's willingness to assume the responsibilities of owning the stock of the Waikoloa Utilities and operating the utilities is evident from the considerable time, effort, and energy spent negotiating [Transaction A and Transaction B], the significant amount of funds expended and anticipated to be expended in connection with the proposed acquisition, and by its joinder in the filing of this Application . . . "<sup>20</sup>

3.

Proposed Financing of the Waikoloa Utilities' Debts

Transaction A requires HWSC to cause WWC and WSSC to repay all outstanding third party debt at, or immediately following, closing.<sup>21</sup> The debts consist of a Promissory Note of \$609,768, dated December 1, 1978 by WWC to Boise Cascade Home and Land Corporation ("BCH&L"), which has been assigned to Perry R. Bass, Inc. (the "WSSC Debt"), and an Assignment of Account Receivable from WWC in the amount of \$2,911,035.00 dated December 20, 1978, from BCH&L to Perry R. Bass, Inc., which has a current balance of \$2,913,906.00 ("WWC Debt").<sup>22</sup>

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<sup>20</sup>Application, at 9.

<sup>21</sup>Application, at 10.

<sup>22</sup>Application, at 10.

Transaction B requires HWSC to cause WRU to repay all outstanding third party debt at, or immediately following, closing. The debt, consisting of the following instruments, ("WRU Debt") is payable to Homestreet Bank:<sup>23</sup>

- a. \$2,950,000 Term Loan evidenced by a Promissory Note dated June 29, 2001, and security by a mortgage and security agreement;
- b. \$1,500,000 Term Loan evidenced by a Promissory Note dated June 29, 2001, and security by a mortgage and security agreement;
- c. \$4,550,000 Term Loan evidenced by a Promissory Note dated July 11, 2005, and security by a mortgage and security agreement; and
- d. \$1,635,000 Construction Loan evidenced by a Promissory Note dated July 11, 2005, and security by a mortgage and security agreement.

Application, at 10-11. The Waikoloa Utilities request authority to refinance the WWC Debt, the WSSC Debt and the WRU Debt.<sup>24</sup>

Applicants state:

HWSC proposes to cause the Waikoloa Utilities to obtain the proposed financing through debt separately placed [ ] or through [debt] incurred by CWSG. If the financing is through CWSG, CWSG will issue unsecured debt securities and will then loan funds to the Waikoloa Utilities pursuant to an inter-company promissory note.

Application, at 11. The interest rate payable by the Waikoloa Utilities on the intercompany loan will be the same as the interest rate payable by CWSG at the time that the debt is

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<sup>23</sup>Application, at 10.

<sup>24</sup>Application, at 11.

incurred; therefore, the Waikoloa Utilities will benefit from the better than average interest rate that CWSG can obtain.<sup>25</sup> HWSC estimates that the expense for the issuance of the proposed debt will be approximately \$100,000.00.<sup>26</sup>

Finally, Applicants request that their unaudited financial statements be accepted in lieu of the audited financial statements required by HAR § 6-61-101(b) based on their small size and because it would cause an additional financial burden.<sup>27</sup> HWSC's information is included in the audited financial statements of CWSG.<sup>28</sup>

B.

Discovery

On February 20, 2008, the commission issued Protective Order No. 24049, which approved the Stipulation for Protective Order submitted by Applicants and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

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<sup>25</sup>Application, at 11.

<sup>26</sup>Application, at 11-12.

<sup>27</sup>Application, at 13.

<sup>28</sup>Application, at 13.

On March 14, 2008, the Consumer Advocate filed its first requests for information upon Applicants. On April 1, 2008, Applicants submitted their Responses to the Consumer Advocate's First Submission of Information Requests ("Applicants' Response to IRs"). In response to the Consumer Advocate's Information Request No. 10, Applicants submitted a document entitled Phase I Environmental Assessment as confidential, pursuant to Protective Order No. 24049.

On April 8, the Consumer Advocate filed supplemental information requests to the Applicants. On April 21, 2008, Applicants submitted their responses to the supplemental information requests. By Order No. 24162, filed on April 23, 2008 ("Order No. 24162"), the commission instructed Applicants to file redacted versions of their Exhibits E and F to the Application, as well as Response No. 10 of Applicants' Response to IRs. On May 1, 2008, Applicants complied with Order No. 24162.

C.

Consumer Advocate's Statement of Position

On May 9, 2008, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to Applicants' request for commission approval of the proposed sales of WWC, WSSC, and WRU stock to HWSC, subject to certain conditions described further below.<sup>29</sup>

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<sup>29</sup>Statement of Position, at 1-2.

The Consumer Advocate explained that, in assessing the reasonableness of Applicants' requests in the Application, the Consumer Advocate focused on the following:

- Is HWSC's proposed purchase of the issued and outstanding shares of common stock in the Waikoloa Utilities reasonable and in the public interest? Included in this issue are the following sub-issues:
  - Is HWSC fit, willing, and able to operate, maintain, and provide the regulated water and wastewater treatment services to the Waikoloa Utilities' customers and to conform to the terms, conditions, rules and regulations of the [c]ommission.
  - Are the terms and conditions of the Stock Purchase Agreements reasonable?
  - Are the proposed Transactions in the best interests of, or at a minimum, not to the detriment of the Waikoloa Utilities' ratepayers?
- Should the refinancing transaction proposed by HWSC in the instant application be found to be reasonable and consistent with the requirements set forth in HRS § 269-17?<sup>30</sup>

Based on its analysis, the Consumer Advocate made the following assertions and recommendations:

HWSC currently provides reliable potable water service to hotels, commercial establishments and residential customers consisting of both single and multi-family units in the Kaanapali region of the Island of Maui. HWSC also provides non-potable water service to the two golf courses in the area. In addition, HWSC is under contract to manage and operate the wastewater treatment facilities of [Pukalani STP Co., Ltd. ("Pukalani STP")]. As noted in the Consumer Advocate's Statement of Position filed in Docket No. 2007-0238, the State [Department of Health ("DOH")] has not issued any notices of violation regarding the operation of

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<sup>30</sup>Statement of Position, at 13.

the Pukalani STP wastewater treatment facility during the period that HWSC was under contract to Pukalani STP. Thus, HWSC appears to have staff in Hawaii who have demonstrated that they possess the technical knowledge and ability to operate a water utility and wastewater utility; both of which serve comparable types of customers of the Waikoloa Utilities.

Statement of Position, at 14. The Consumer Advocate states, "as a wholly owned subsidiary of CWSG, which has subsidiaries authorized to provide water and wastewater treatment services in other jurisdictions, it is reasonable to assume that HWSC will have ready access to qualified personnel, if needed on an emergency basis, to assist in the management and operation of the acquired Waikoloa Utilities."<sup>31</sup> Therefore, the Consumer Advocate states "that HWSC possess[es] the technical and managerial expertise to operate and manage the Waikoloa Utilities in compliance with existing regulatory requirements of the [c]ommission."<sup>32</sup>

With regard to financial ability, the Consumer Advocate states, "HWSC appears to have sufficient financial resources to sustain the Waikoloa Utilities operation. HWSC had a retained earnings balance of \$876,812 at December 31, 2007."<sup>33</sup> The Consumer Advocate also notes that through CWSG, HWSC can access lower cost financing due to the fact that CWSG is a New York Stock Exchange publicly traded company, has an A+ credit rating from Standard & Poor's, and the latest

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<sup>31</sup>Statement of Position, at 15.

<sup>32</sup>Statement of Position, at 15.

<sup>33</sup>Statement of Position, at 15.

quarterly report revealed that CWSG possesses over \$1.1 billion in assets as of September 30, 2007.<sup>34</sup> CWSG also represents that it, together with its subsidiaries, has a \$75 million bank line of credit available.<sup>35</sup> The Consumer Advocate "believes that the acquisition of the Waikoloa Utilities' stock by HWSC will provide the Waikoloa Utilities with HWSC's and CWSG's regulatory utility expertise and financial resources to continue operating the Waikoloa Utilities into the future in accordance with the [c]ommission's rules and regulations."<sup>36</sup> Moreover, the Consumer Advocate states, "it appears that the proposed transaction is in the public interest due to the expected lower financing costs, additional financial support, and technical and managerial expertise in the operations of a regulated utility that would not be available to the Waikoloa Utilities absent the purchase of the Waikoloa Utilities' stock by HWSC."<sup>37</sup>

In addition, the Consumer Advocate recommended approval of HWSC's request to refinance the outstanding debt of the Waikoloa Utilities through financing arrangements negotiated through CWSG. However, the Consumer Advocate stated, "[t]he debt and related costs to refinance the existing debt of WWC,

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<sup>34</sup>Statement of Position, at 16.

<sup>35</sup>Statement of Position, at 16.

<sup>36</sup>Statement of Position, at 16.

<sup>37</sup>Statement of Position, at 17.

however, should not be recognized for rate setting purposes."<sup>38</sup>

The Consumer Advocate:

recommends that Applicants be required to maintain an accounting of the costs incurred to process the instant application and record such costs in "below the line" accounts. The accounting will ensure that no costs associated with the processing of the instant application are directly or indirectly recovered from ratepayers in future rate proceedings. Furthermore, the separate accounting of costs related to the proposed transaction should at least continue until the next rate case.

Statement of Position, at 18.

The Consumer Advocate concluded that the proceeds of WSSC's \$609,768 debt to Perry R. Bass, Inc. was for funds used to acquire assets used in the provision of utility service; therefore, "WSSC's proposal to refinance the debt is reasonable since it meets the requirements of HRS § 269-17 and the assets appear to have been recognized for rate setting purposes."<sup>39</sup>

With regard to WWC's Debt, the Consumer Advocate states:

. . . the \$2,913,906 debt of WWC to Perry R. Bass, Inc. appears to, for the most part, satisfy the requirements of HRS § 269-17 because the debt is associated with assets that are used in the provision of the regulated water service. The refinancing of the debt and the associated costs of such refinancing, however, should not be recognized for ratemaking purposes.

Statement of Position, at 22. The Consumer Advocate believes, "WWC's initial plant was constructed by [BCH&L], . . . [who] transferred title in the plant to WWC in 1971 at a

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<sup>38</sup>Statement of Position, at 2.

<sup>39</sup>Statement of Position, at 22.



value of \$4,522,594 . . . the accounting entry to record the transfer initially reflected a debit to accounts receivable of \$4,522,594 on [BCH&L's] books. [BCH&L] later transferred this amount to its Valuation Reserve account in recognition of the fact that WWC would not be able to make the payments on the principal to [BCH&L]."<sup>40</sup>

D.

#### Applicants' Response

In response to the Consumer Advocate's Statement of Position, on May 20, 2008, Applicants filed a document entitled, "Waikoloa Water Co., Inc., Waikoloa Sanitary Sewer Co., Inc., Waikoloa Resort Utilities, Inc., and Hawaii Water Service Company, Inc.'s Statement of Position Regarding the Division of the Consumer Advocacy's Statement of Position, filed May 9, 2008" ("Applicants' Statement of Position"). Applicants do not object to any of the recommendations made by the Consumer Advocate.<sup>41</sup>

II.

#### Discussion

A.

##### Proposed Stock Sales of WWC, WSSC, and WRU

Under Hawaii law, the commission is vested with broad powers to review the proposed sales of WWC, WSC, and

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<sup>40</sup>Statement of Position, at 22.

<sup>41</sup>Applicants' Statement of Position, at 2.

WRU's stock and related proposed financing arrangements by which ownership of each utility is ultimately being transferred to HWSC. Specifically, HRS § 269-17.5 prohibits no more than twenty-five percent of the issued and outstanding voting stock of a corporation organized under the laws of the State to be held by any single foreign corporation or any single nonresident alien "unless prior written approval is obtained from the [commission] . . . ."<sup>42</sup> Moreover, the commission must approve and authorize any purchase, acquisition, taking or holding of any part of the capital stock of any public utility corporation by another public utility corporation.<sup>43</sup>

In addition, HRS § 269-19 states as follows:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

HRS § 269-19 (emphasis added).

In addition, HRS § 269-7(a) states, in relevant part:

The public utilities commission . . . shall have [the] power to examine into the condition of each public utility, the manner in which it is operated with reference . . . the issuance by it of stocks

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<sup>42</sup>HRS § 269-17.5.

<sup>43</sup>HRS § 269-18.

and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

HRS § 269-7(a).

Commission approval under HRS § 269-7(a) requires a finding that the proposed sales of stock are "reasonable and consistent with the public interest."<sup>44</sup> A transaction is said to be reasonable and consistent with the public interest if the transaction "will not adversely affect the . . . [utility's] fitness, willingness, and ability to provide" public utility service in the State as authorized in its permit, certificate, or franchise.<sup>45</sup> When reviewing a proposed transfer and related financing requirements under HRS § 269-19, the commission has applied the standard of review of HRS § 269-7.5, which states that the applicant must be "fit, willing, and able properly to

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<sup>44</sup>In re Sprint Communications Company, L.P., Sprint Payphone Services, Inc., and ASE Telecom, Inc., Docket No. 05-0045, Decision and Order No. 21715, filed on April 4, 2005 ("Sprint"), at 11 (citing In re ITC^DeltaCom Communications, Inc., et al., Docket No. 02-0345, Decision and Order No. 19874, filed on December 13, 2002); In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications, et al., Docket No. 00-0354, Decision and Order No. 18220, filed on November 30, 2000; In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications, et al., Docket No. 00-0047, Decision and Order No. 17662, filed on April 10, 2000.

<sup>45</sup>Sprint at 11-12 (citing In re Ionex Telecommunications, Inc., et al., Docket No. 99-0223, Decision and Order No. 17369, filed on November 8, 1999).

perform the service proposed."<sup>46</sup> Thus, when reviewing Applicants' requests in the Application under HRS § 269-19, the commission must find that: (1) HWSC will be fit, willing, and able to perform the proposed service under HWSC's ownership; and (2) the transfer is reasonable and in the public interest (collectively and generically referred to as the "Fitness and Public Interest standard").

1.

HWSC is Fit, Willing, and  
Able to Perform the Proposed Service

Having reviewed the entire record, the commission finds that the proposed sales of WWC, WSSC, and WRU's stock to HWSC meets the Fitness and Public Interest standard. First, HWSC appears fit, willing, and able to provide the proposed wastewater treatment service. HWSC currently provides water services in other service territories in the State, and has properly held a CPCN since 1980. Applicants state, "HWSC and its upstream affiliates all have extensive experience in the water and wastewater industries to understand the regulatory issues affecting the industry and to provide any necessary support and

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<sup>46</sup>In re Paradise MergerSub, et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005, at 13 (citing In re Citizens Communications Company, Kauai Electric Division and Kauai Island Utility Co-op, Docket No. 02-0060, Decision and Order No. 19658, filed on September 17, 2002, at 14-15, referencing In re GTE Corp. and Bell Atlantic Corporation, Docket No. 98-0345, Decision and Order No. 17377, filed on November 17, 1999); In re BHP Hawaii Inc., GASCO, Inc. and Citizens Utilities Company, Docket No. 97-0035, Decision and Order No. 15899, filed on September 10, 1997.

other services to ensure the successful operation of the acquired utility operations without degradation of service to the Waikoloa Utilities' customers."<sup>47</sup> Moreover, the Consumer Advocate notes:

HWSC currently provides reliable potable water service to hotels, commercial establishments and residential customers consisting of both single and multi-family units in the Kaanapali region of the Island of Maui. HWSC also provides non-potable water service to the two golf courses in the area. In addition, HWSC is under contract to manage and operate the wastewater treatment facilities of Pukalani STP. As noted in the Consumer Advocate's Statement of Position filed in Docket No. 2007-0238, the State DOH has not issued any notices of violation regarding the operation of the Pukalani STP wastewater treatment facility during the period that HWSC was under contract to Pukalani STP. Thus, HWSC appears to have staff in Hawaii who have demonstrated that they possess the technical knowledge and ability to operate a water utility and wastewater utility; both of which serve comparable types of customers of the Waikoloa Utilities.

Statement of Position, at 14.

HWSC also appears to have sufficient financial resources to sustain the wastewater treatment operation.<sup>48</sup>

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<sup>47</sup>Application, at 8.

<sup>48</sup>Applicants request that their unaudited financial statements be accepted in lieu of audited financial statements pursuant to HAR § 6-61-92. In support of their request, they state that they are small public utilities who do not have audited financial reports and to have such reports prepared would delay the filing, unjustly impose additional financial burdens on Applicants, and HWSC's information is included in the audited financial statements of CWSG. See Application, at 13. The commission finds that HAR § 6-61-92 is not applicable in this proceeding. However, the commission, on its own motion, determines that the unaudited financial statements suffice in the circumstances and in order to secure the just, speedy, and inexpensive determination of this proceeding pursuant to HAR § 6-61-1.

As a wholly owned subsidiary of CWSG, HWSC will have access to the technical, managerial, and financial support of CWSG, in addition to lower cost financing.<sup>49</sup> Based on the above, it appears that HWSC possesses the technical, managerial, and financial ability to operate and manage the acquired wastewater treatment facilities in compliance with existing regulatory requirements.

2.

The Proposed Sales are  
Reasonable and in the Public Interest

The commission finds that the proposed sales of WWC, WSSC, and WRU's stock to HWSC appear reasonable and in the public interest. Applicants represent that the Waikoloa Utilities are facing "substantial capital improvements" necessary to meet a rapidly growing demand for water and sewer services in their service territories.<sup>50</sup> Future improvements include a new sewage treatment plant for WSSC, an expanded and upgraded sewage treatment plant for WRU, and additional wells, tanks, and other transmission facilities for customers of WRU and WWC.<sup>51</sup> Upon review, the commission finds that the sales of WWC, WSSC, and WRU's stock to HWSC will enable the requisite improvements. Specifically, HWSC's plans to improve the existing equipment should provide existing customers with reliable service

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<sup>49</sup>Application, at 7-8.

<sup>50</sup>Application, at 8.

<sup>51</sup>Application, at 8.

that is necessary to public health and safety. For all of these reasons, the commission concludes that the proposed sales of WWC, WSSC, and WRU's stock to HWSC are reasonable and in the public interest.

B.

Proposed Financing

Under HRS § 269-17, a public utility must obtain prior commission approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months after the date of issue. This section restricts the purpose for which stocks and other evidences of indebtedness may be issued to, among other things, the acquisition of property or the construction, completion, extension, or improvement of, or addition to its facilities or services. Moreover, HRS § 269-7(a), cited above, authorizes the commission to examine the condition of every public utility, including all of its financial transactions and its business relations with other persons, companies, and corporations; including, as in this case, the sale of stock shares. Upon review, the commission finds that the proposed financing requested by Applicants is for permissible purposes under HRS § 269-17 and should be approved.

C.

Conditions

The Consumer Advocate recommends that:

Applicants be required to maintain an accounting of the costs incurred to process the instant application and record such costs in 'below the line' accounts. The accounting will ensure that no costs associated with the processing of the instant application are directly or indirectly recovered from ratepayers in future rate proceedings. Furthermore, the separate accounting of costs related to the proposed transaction should at least continue until the next rate case.

Statement of Position, at 18. Applicants state, "[r]egardless of whether or not there is an acquisition premium at Closing, HWSC does not intend to seek recovery of any such premium for ratemaking purposes."<sup>52</sup> Moreover, Applicants indicate that they have no opposition to the Consumer Advocate's recommendations:

Applicants do not object to any of the recommendations made by the Consumer Advocate in its Statement of Position. Applicants inform the [c]ommission that this matter is ready for decision making.

Applicants' Statement of Position, at 2.

The commission finds the Consumer Advocate's recommendations to be reasonable. Therefore:

(a) Applicants shall be required to maintain an accounting of the costs incurred to process the Application and record such costs in "below the line" accounts. The separate accounting of costs related to the proposed transaction shall continue until HWSC's next rate case.

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<sup>52</sup> Applicants' Response to CA-IR-2a.



(b) HWSC may adopt the Waikoloa Utilities' tariffs and applicable rates previously approved for the Waikoloa Utilities and currently in effect. Upon closing of the proposed sale, HWSC shall refile the tariffs to reflect the change in ownership and service provider.

(c) Promptly after closing of the proposed sales of stock, notice of the change in ownership and service provider of the utility, and any other relevant information, shall be provided to the Waikoloa Utilities' customers, with proof of such notice filed with the commission and the Consumer Advocate.

(d) Related to the proposed financing arrangements, HWSC shall submit copies of the actual loan documents once the financing terms are finalized.

In addition, because upon closing of the stock sales, HWSC will have multiple CPCNs, the commission finds it reasonable and appropriate to require HWSC to comply with the following regulatory conditions:

(e) HWSC shall maintain three separate books for WWC, WSSC, and WRU. It shall file with the commission and also serve upon the Consumer Advocate three separate annual financial reports in accordance with the Uniform System of Accounts - 1996, of the National Association of Regulatory Utility Commissioners, covering its operations for WWC, WSSC, and WRU. The three reports shall be filed no later than March 31 of each year, for the immediate past calendar year. HWSC's annual financial reports shall clearly segregate the WWC, WSSC, and WRU operations.

(f) HWSC shall establish and implement accounting procedures and record keeping processes, especially for matters related to allocations of common costs, to ensure that sufficient records exist to facilitate future regulatory review of any and all regulated, non-regulated, and unaffiliated allocated costs.

(g) The commission's applicable orders, rules, terms and conditions related to the Waikoloa Utilities' operations shall continue in effect, as applied to HWSC, including the commission's requirements for the filing of annual financial reports (see Paragraph (e) above) and payment of public utility fees. HWSC shall separately file and pay three public utility fees for WWC, WSSC, and WRU's operations.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The proposed sales of WWC, WSSC, and WRU's stock to HWSC, and proposed financing arrangements, as described in the Application, are approved, subject to the following terms and conditions:

(a) Any effort to directly or indirectly recover the acquisition premium, transition, and/or transactional costs associated with the stock sale is prohibited and denied. Applicants shall maintain an accounting of the costs incurred to process the Application and record such costs in "below the line" accounts to be amortized and specifically excluded from revenue requirements.

(b) HWSC may adopt the Waikoloa Utilities' tariffs and applicable rates previously approved for the three Waikoloa Utilities and currently in effect. Upon closing of the proposed sale, HWSC shall refile the tariffs to reflect the change in ownership and service provider.

(c) Promptly after closing of the proposed sales of stock, notice of the change in ownership and service provider of the utility, and any other relevant information, shall be provided to the Waikoloa Utilities' customers, with proof of such notice filed with the commission and the Consumer Advocate.

(d) Related to the proposed financing arrangements, HWSC shall submit copies of the actual loan documents once the financing terms are finalized.

(e) HWSC shall maintain three separate books for WWC, WSSC, and WRU operations. It shall file with the commission and also serve upon the Consumer Advocate three separate annual financial reports in accordance with the Uniform System of Accounts - 1996, of the National Association of Regulatory Utility Commissioners, covering its operations for WWC, WSSC, and WRU, respectively. The three reports shall be filed no later than March 31 of each year, for the immediate past calendar year.

HWSC's annual financial reports shall: (i) clearly segregate the WWC, WSSC, and WRU operations; and (ii) include a rate of return analysis, as an appendix or addendum, that can be easily reconciled with the annual financial reports filed by HWSC.

(f) HWSC shall establish and implement accounting procedures and record keeping processes, especially for matters related to allocations of common costs, to ensure that sufficient records exist to facilitate future regulatory review of any and all regulated, non-regulated, and unaffiliated allocated costs.

(g) The commission's applicable orders, rules, terms and conditions related to the Waikoloa Utilities' operations shall continue in effect, as applied to HWSC, including the commission's requirements for the filing of annual financial reports (see Paragraph (e) above) and payment of public utility fees. HWSC shall separately file and pay three public utility fees for WWC, WSSC, and WRU's operations.

2. Transaction A and Transaction B are approved, to the extent required under HRS Chapter 269.

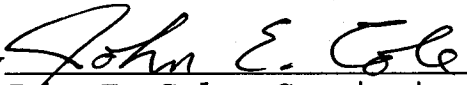
3. CWSG shall provide, within thirty (30) days of the filing of this Decision and Order, a verified statement, signed by an officer or authorized person, attesting to the truth and accuracy of the statements made in the Application, filed on January 31, 2008.

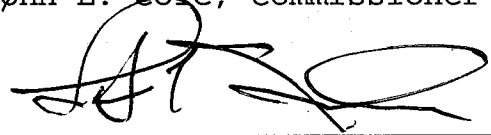
4. Applicants shall timely comply with all of the regulatory conditions and other requirements set forth herein, as applicable. Failure to comply with any of these regulatory conditions and requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by State law and commission rules and regulations.

DONE at Honolulu, Hawaii AUG 20 2008.

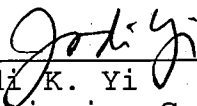
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Jodi K. Yi  
Commission Counsel

2008-0018.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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